

ATTACHMENT C

BURLINGTON VENDOR CONDITIONS

1. **RELATIONSHIP:** The Vendor is an independent vendor and shall act in an independent capacity and not as officers or employees of the City. To that end, the Vendor shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The Vendor shall provide its own tools, materials or equipment. The Parties agree that neither the Vendor nor its Principal(s) or employees is entitled to any employee benefits from the City. Vendor understands and agrees that it and its Principal(s) or employees have no right to claim any benefits under the Burlington Employee Retirement System, the City's worker's compensation benefits, health insurance, dental insurance, life insurance, or any other employee benefit plan offered by the City. The Vendor agrees to execute any certifications or other documents and provide any certificates of insurance required by the City and understands that this Agreement is conditioned on its doing so, if requested.

The Vendor understands and agrees that it is responsible for the payment of all taxes on the above sums and that the City will not withhold or pay for Social Security, Medicare, or other taxes or benefits or be responsible for any unemployment benefits.

2. **INDEMNIFICATION:** The Vendor shall indemnify, defend, and hold harmless the City and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the Vendor's acts and/or omissions in the performance of this Agreement. If the City, its officers, agents, or employees are notified of any claims asserted against it to which this indemnification provision may apply, the City shall immediately thereafter notify the Vendor in writing that a claim to which the indemnification provision may apply has been filed. Vendor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The City retains the right to participate, at its own expense, in the defense of any claim, and to approve all proposed settlements of claims to which this provision applies. Under no conditions shall the City be obligated to indemnify the Vendor or any third party, nor shall the City be otherwise liable for expenses or reimbursement including attorney's fees, collection costs, or other costs of the Vendor or any third party.
3. **INSURANCE:** Prior to beginning any work, the Vendor shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the City. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the Effective Date of the Agreement. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. In the event that this Agreement extends to greater than one year, evidence of continuing coverage must be submitted to the City on an annual basis. Certified copies of any insurance policies may be required. Each policy shall name the City as an additional insured for the possible liabilities resulting from the Vendor's actions or omissions. It is

agreed that the liability insurance furnished by the Vendor is primary and non-contributory for all the additional insured.

The Vendor is responsible to verify and confirm in writing to the City that: (i) all sub-vendors must comply with the same insurance requirements as the Vendor; (ii) all coverage shall include adequate protection for activities involving hazardous materials; and (iii) all work activities related to the Agreement shall meet minimum coverage and limits.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Vendor for the Vendor's operations. These are solely minimums that have been developed and must be met to protect the interests of the City.

A. GENERAL LIABILITY AND PROPERTY DAMAGE: With respect to all operations performed by the Vendor, sub-vendors, agents or workers, it is the Vendor's responsibility to insure that general liability insurance coverage, on an occurrence form, provides all major divisions of coverage including, but not limited to and with limits not less than:

1. Premises Operations
2. Independent Vendors' Protective
3. Products and Completed Operations
4. Personal Injury Liability
5. Agreement Liability
6. Broad Form Property Damage
7. Medical Expenses
8. Collapse, Underground and Explosion Hazards

Coverage limits shall not be less than:

1.	General Aggregate	\$2,000,000
2.	Products-Completed/Operations	\$2,000,000
3.	Personal & Advertising Injury	\$1,000,000
4.	Each Occurrence	\$1,000,000
5.	Fire Damage (Any one fire)	\$ 250,000
6.	Legal/Liability	\$ 50,000
7.	Med. Expense (Any one person)	\$ 5,000

B. WORKERS' COMPENSATION: With respect to all operations performed, the Vendor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont and ensure that all sub-vendors carry the same workers' compensation insurance for all work performed by them under this Agreement. Minimum limits for Employer's Liability:

1. Bodily Injury by Accident: \$500,000 each accident
2. Bodily Injury by Disease: \$500,000 policy limit,

\$500,000 policy limit; \$100,000 each employee

C. PROFESSIONAL LIABILITY INSURANCE:

1. General. The Vendor shall carry architects/engineers professional liability insurance covering errors and omissions made during their performance of contractual duties with the following minimum limits:
 - (a) \$3,000,000 - Annual Aggregate
 - (b) \$2,000,000 - Per Occurrence
2. Deductibles. The Vendor is responsible for any and all deductibles.
3. Coverage. Prior to performing any work, the Vendor shall provide evidence of professional liability insurance coverage defined under this section. In addition, the Vendor shall maintain continuous professional liability coverage for the period of the Agreement and for a period of five years following substantial completion of construction.

D. AUTOMOBILE LIABILITY: The Vendor shall carry commercial automobile liability insurance covering all motor vehicles, including owned, non-owned and hired, used in connection with the Agreement. Each policy shall provide coverage with a limit not less than: \$1,000,000 Combined Single Limit for each occurrence.

E. VALUABLE PAPERS AND RECORDS INSURANCE: The Vendor shall carry valuable papers insurance in a form and amount sufficient to ensure the restoration or replacement of any plans, drawings, field notes, or other information or data relating to the work, whether supplied by the City or developed by the Vendor, sub-vendor, worker, or agent, in the event of loss, impairment, or destruction. Such coverage shall remain in force until the final plans as well as all related materials have been delivered by the vendor to, and accepted by, the City. Unless otherwise provided, Valuable Papers and Records Insurance shall provide coverage on an "individual occurrence" basis with limits in the amount of one hundred and fifty thousand dollars (\$150,000) when the insured items are in the Vendor's possession, and in the amount of forty thousand dollars (\$40,000) regardless of the physical location of the insured items.

F. UMBRELLA LIABILITY:

1. \$1,000,000 Each Event Limit
 2. \$1,000,000 General Aggregate Limit
4. **GENERAL COMPLIANCE WITH LAWS:** The Vendor shall comply with all applicable Federal, State and local laws, including but not limited to the Burlington Livable Wage Ordinance, the Non-Outsourcing Ordinance, and the Union-Deterrence Ordinance and shall

provide the required certifications attesting to compliance with these ordinances (see attached ordinances and certifications).

Provisions of the Agreement shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both Parties. If, for any reason, a provision in the Agreement is unenforceable or invalid, that provision shall be deemed severed from the Agreement, and the remaining provisions shall be carried out with the same force and effect as if the severed provisions had never been a part of the Agreement.

5. **CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY:** During performance of the Agreement, the Vendor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. Vendor, and any subcontractors, shall comply with any Federal, State, or local law, statute, regulation, Executive Order, or rule that applies to it or the services to be provided under this contract concerning equal employment, fair employment practices, affirmative action, or prohibitions on discrimination or harassment in employment.
6. **TAX REQUIREMENTS:** By signing the Agreement, the Vendor certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, they are in good standing with respect to payment, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of signature on the Agreement
7. **REGISTRATION:** The Vendor agrees to be registered with the Vermont Secretary of State's office as a business entity doing business in the State of Vermont at all times this Agreement is effective. This registration must be complete prior to Agreement execution.
8. **PERSONNEL REQUIREMENTS AND CONDITIONS:** The Vendor shall employ only qualified personnel, for responsible authority to supervise the work. The City shall have the right to approve or disapprove key personnel assigned to administer activities related to the Agreement.

Except with the approval of the City, during the life of the Agreement, the Vendor shall not employ:

1. Personnel on the payroll of the City who are directly involved with the awarding, administration, monitoring, or performance of the Agreement or any project(s) that are the subjects of the Agreement.
2. Any person so involved within one (1) year of termination of employment with the City.

The Vendor warrants that no company or person has been employed or retained, other than a bona fide employee working solely for the Vendor, to solicit or secure this Agreement, and that no company or person has been paid or has an agreement with the Vendor to be paid, other than a bona fide employee working solely for the Vendor, any fee, commission,

percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, the City shall have the right to annul the Agreement, without liability to the City, and to regain all costs incurred by the City in the performance of the Agreement.

The City reserves the right to require removal of any person employed by a Vendor, from work related to the Agreement, for misconduct, incompetence, or negligence as determined by the City, in the due and proper performance of Vendor's duties, or for neglecting or refusing to comply with the requirements of the Agreement.

- 9. TRANSFERS, SUBLETTING, ETC:** The Vendor shall not assign, sublet, or transfer any interest in the work, covered by this Agreement, without prior written consent of the City, and further, if any sub-vendor participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the City. The approval or consent to assign or sublet any portion of the work, shall in no way relieve the Vendor of responsibility for the performance of that portion of the work so transferred. The form of the sub-vendor's agreement shall be as developed by the Vendor and approved by the City. The Vendor shall ensure that insurance coverage exists for any operations to be performed by any sub-vendor as specified in the insurance requirements section of this Agreement.

The services of the Vendor, to be performed under the Agreement, are personal and shall not be transferred without written authorization of the City. Any authorized sub agreements shall contain all of the same provisions contained in and attached to the original Agreement with the City.

- 10. CONTINUING OBLIGATIONS:** The Vendor agrees that if because of death, disability, or other occurrences, it becomes impossible to effectively perform its services in compliance with the Agreement, neither the Vendor nor its surviving members shall be relieved of their obligations to complete the Agreement unless the City agrees to terminate the Agreement because it determines that the Vendor is unable to satisfactorily execute the Agreement.
- 11. OWNERSHIP OF THE WORK:** The Vendor agrees that the ownership of all studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM and other material prepared or collected by the Vendor, hereafter referred to as "instruments of professional service", shall become the property of the City as they are prepared and/or developed during execution of the Agreement. The Vendor agrees to allow the City access to all "instruments of professional service" at any time. The Vendor shall not copyright any material originating under the Agreement without prior written approval of the City. No publications or publicity of the work, in part or in total, shall be made without the express written agreement of the City, except that Vendor may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.
- 12. PROPRIETARY RIGHTS:** The Parties under the Agreement hereby mutually agree that, if patentable discoveries or inventions should result from work performed under the Agreement,

all rights accruing from such discoveries or inventions shall be the sole property of the Vendor. The Vendor, however, agrees to and does hereby grant to the City an irrevocable, nonexclusive, non-transferable, and royalty-free license to the manufacture, use, and disposition of each such discovery or invention that may be developed as a part of the work under the Agreement.

13. PUBLIC RECORDS: The Vendor understands that any and all records related to and acquired by the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of City. The Vendor shall identify all records that it considers to be trade secrets as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act and shall also identify all other records it considers to be exempt under the Act. It is not sufficient to merely state generally that the record is proprietary or a trade secret or is otherwise exempt. Particular records, pages or section which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

14. RECORDS RETENTION: The Vendor agrees to retain, in its files, and to produce to the City—within the time periods requested—all books, documents, Electronic Data Media (EDM), accounting records, and other records produced or acquired by the vendor in the performance of this agreement which are related to the City, at any time during this Agreement and for a period of at least three (3) years after its completion or termination. In addition, if any audit, claim, or litigation is commenced before the expiration of that three (3) year period, the records shall be retained until all related audits, claims, or litigation are resolved. The Vendor further agrees that the City shall have access to all the above information for the purpose of reviewing and audit during the Agreement period and anytime within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the City if requested in the format in which the records were obtained, created, or maintained, such that their original use and purpose can be achieved. Vendor, sub-vendors, or any representatives performing work related to the Agreement, are responsible to insure that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage.

15. APPEARANCES:

A. Hearings and Conferences. The Vendor shall provide professional services required by the City and necessary for furtherance of any work covered under the Agreement. Professional services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain and defend its contractual services covered under the Agreement.

The Vendor shall perform any liaison that the City deems necessary for the furtherance of the work and participate in conferences with the City, at any reasonable time, concerning interpretation and evaluation of all aspects covered under the Agreement.

The Vendor further agrees to participate in meetings with the City and any other interested or affected participant, for the purpose of review or resolution of any conflicts pertaining to the Agreement.

The Vendor shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto in accordance with the Agreement.

B. Appearance as Witness. If and when required by the City, the Vendor, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related contract, on behalf of the City. The Vendor shall be equitably paid, to the extent permitted by law, for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Agreement.

16. CHANGES AND AMENDMENTS: No changes or amendments of the Agreement shall be effective unless documented in writing and signed by authorized representatives of the City and the Vendor.

17. APPENDICES: The City may attach, to these specifications, appendices containing various forms and typical sample sheets for guidance and assistance to the Vendor in the performance of the work. It is understood, however, that such forms and samples may be modified, altered, and augmented from time to time by the City as occasions may require. It is the responsibility of the Vendor to ensure that they have the latest versions applicable to the Agreement.

18. EXTENSION OF TIME: The Vendor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by the Vendor for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the City may decide. Time extensions shall be granted by amendment, only for excusable delays, such as delays beyond the control of the Vendor and without the fault or negligence of the Vendor.

19. FAILURE TO COMPLY WITH TIME SCHEDULE: It is mutually understood and agreed to, that neither Party hereto shall be held responsible for delay in performing the work encompassed herein, when such delay is due to unforeseeable causes such as acts of God, or a public enemy, fire, strikes, floods, or legal acts of public authorities. In the event that any such causes for delay are of such magnitude as to prevent the complete performance of the Agreement within two (2) years of the originally scheduled completion date, either Party may by written notice request to amend or terminate the Agreement.

20. CITY'S OPTION TO TERMINATE: The Agreement may be terminated in accordance with the following provisions, which are not exclusive:

1. Breach of Agreement. Administrative remedies - the City may terminate this Agreement due to a breach by Vendor. Termination for breach of Agreement will

be without further compensation to the Vendor.

2. Termination for Cause. The City may, upon written notice to the Vendor, terminate the Agreement, as of a date to be specified by the City, if the Vendor fails to complete the designated work to the satisfaction of the City, within the time schedule agreed upon. The Vendor shall be compensated on the basis of the work performed and accepted by the City at the date of final acceptance of the Work.
 3. Termination for Convenience. In addition to its rights and options to terminate this Agreement as provided herein, the City may, at any time prior to completion of services specified under the Agreement, terminate the Agreement by submitting written notice to Vendor, within not less than fifteen (15) days prior to the termination date, via certified or registered mail, of its intention to do so. If the termination is for the City's convenience, payment to the Vendor will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made. However, if a notice of termination is given to a Vendor prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Vendor will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination, that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the City's approval. The Vendor shall make no claim for additional compensation against the City by reason of such termination.
 4. Contract Disputes. In the event of a dispute between the parties to this agreement each party will continue to perform its obligations unless the Agreement is terminated in accordance with these terms.
- 21. ACKNOWLEDGEMENTS:** Acknowledgment of the City's support must be included in any and all publications, renderings and project publicity, including audio/visual materials developed under this Agreement.
- 22. RESPONSIBILITY FOR SUPERVISION:** The Vendor shall assume primary responsibility for general supervision of Vendor employees and their sub-vendors for all work performed under the Agreement and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Agreement. The Vendor shall be liable to the City for all acts or omissions of their subcontractors and any other persons performing work under this Agreement.
- 23. PERFORMANCE IN ACCORD WITH PROFESSIONAL STANDARDS**
Vendor shall perform the Work in the best and most workmanlike manner consistent with professional standards. If any of the Work is rejected by the City as failing to meet

professional standards, Vendor will remove and replace the defective portions to the satisfaction and approval of the City, at the cost and expense of Vendor.

- 24. UTILITIES:** Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the Vendor will counsel with the City, plus achieve any necessary contacts and discussions with the affected owners, regarding any requirement necessary for revisions of facilities or existing installations, both above and below ground. Any such installations must be completely and accurately exhibited on any detail sheets or plans. The Vendor shall inform the City, in writing, of any such contacts and the results thereof.
- 25. PUBLIC RELATIONS:** Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the Vendor will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Vendor shall conduct themselves with propriety. The Vendor agrees to inform property owners and/or tenants, in a timely manner, if there is need for entering upon private property as an agent of the City, in accordance with VSA Title 19 § 35 and §503, in order to accomplish the work under the Agreement. The Vendor agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the Vendor, the City shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the Vendor is acting as an agent of the City.
- 26. INSPECTION OF WORK:** The City shall, at all times, have access to the Vendor's work for the purposes of inspection, accounting, and auditing, and the Vendor shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Vendor shall permit the City or representative for the City the opportunity to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the Vendor pursuant to the Agreement.

Conferences, visits to a site, or an inspection of the work, may be held at the request of any involved party or by representatives of the City.
- 27. RETURN OF MATERIALS:** Vendor agrees that at the expiration or termination of this Agreement, it shall return to City all materials provided to it during its engagement on behalf of City.
- 28. PLANS RECORDS AND AVAILABLE DATA:** The City agrees to make available, at no charge, for the Vendor's use all available data related to the Agreement including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.
- 29. DESIGN STANDARDS:** Unless otherwise specifically provided for in the Agreement, or directed in writing, Vendor services, studies or designs, that include or make reference to plans, specifications, special provisions, computations, estimates, or other data shall be in conformance with applicable City, state, and federal specifications, manuals, codes or

regulations, including supplements to or revisions thereof, adopted prior to or during the duration of this Agreement. In case of any conflict with the guidelines referenced, the Vendor is responsible to identify and follow any course of direction provided by the City.

- 30. REVIEWS AND ACCEPTANCES:** All preliminary and detailed designs, plans, specifications, estimates or other documents prepared by the Vendor, shall be subject to review and endorsement by the City.

Approval for any inspections or sequences of progress of work shall be documented by letters, memoranda or other appropriate written means.

A frequency for formal reviews shall be set forth in the Agreement. Informal reviews, conducted by the City will be performed as deemed necessary. The Vendor shall respond to all official comments regardless of their source. The Vendor shall supply the City with written copies of all correspondence relating to formal and informal reviews.

No acceptance shall relieve a Vendor of their professional obligation to correct any defects or errors in their work at their own expense.

- 31. BINDING NATURE AND JURISDICTION:** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors or heirs and representatives, and assigns. This Agreement shall be governed by Vermont law, and the Vendor expressly agrees to submit to the jurisdiction of the courts of the State of Vermont.

- 32. PAYMENT PROCEDURES:** The City shall pay, or cause to be paid to the Vendor or the Vendor's legal representative, payments in accordance with the Agreement. All payments will be made in reliance upon the accuracy of all representations made by the Vendor, whether in invoices, progress reports, emails, or other proof of work. When applicable, for the type of payment specified in the Agreement, the progress report shall summarize actual costs and any earned portion of fixed fee.

All invoices and correspondence shall indicate the applicable project name, project number and the Agreement number. When relevant, the invoice shall further be broken down in detail between projects.

When applicable, for the type of payment specified in the Agreement, expenses for meals and travel shall be limited to the current approved in-state rates, as determined by the State of Vermont's labor contract, and need not be receipted. All other expenses are subject to approval by the City and must be accompanied with documentation to substantiate their charges.

No approval given or payment made under an agreement, shall be conclusive evidence of the performance of said agreement, either wholly or in part thereof, and no payment shall be construed to be acceptance of defective work or improper materials.

The City agrees to pay the Vendor and the Vendor agrees to accept, as full compensation, for performance of all services rendered and expenses encompassed in conformance therewith, the

type of fee specified in the Agreement.

Upon completion of all services covered under the Agreement and payment of the agreed upon fee, the Agreement with its mutual obligations shall expire.

33. PAYMENT FOR ADDITIONS OR DELETIONS: The City may, upon written notice, and without invalidating the Agreement, require any changes to, additions to, or deletions from, the originally contemplated extent of the work, prior to completion of the Agreement by means of an amendment to the original Agreement. Any adjustments of this nature shall be executed under the appropriate fee established in the Agreement, based on the adjusted quantity of work, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such addition or deletion.

34. PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES: The City may, upon written notice, and without invalidating the Agreement, require changes resulting from revision or abandonment of work already performed by the Vendor or changes in the scope of work.

The value of such changes, to the extent not reflected in other payments to the Vendor, shall be incorporated in an amendment and be determined by mutual agreement.

The Vendor agrees to maintain complete and accurate records, in a form satisfactory to the City for all time devoted directly to same by Vendor employees. The City reserves the right to audit the records of the Vendor related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Agreement. When changes are so ordered, no additional work shall be performed by the Vendor until an Agreement amendment has been fully executed, unless written notice to proceed is issued by the City. Any claim for extension of time, which may be necessitated as a result of extra work or additional services and changes, shall be given consideration and evaluated insofar as it directly relates to the change.

35. CONFLICT OF INTEREST: The Vendor shall disclose in writing to the City any actual or potential conflicts of interest or any appearance of a conflict of interest by the Vendor, its employees or agents, or its subcontractors, if any.

36. NO GIFTS OR GRATUITIES: The Vendor shall not make any payment or gift or donation of substantial value to any elected official, officer, employee, or agent of the City during the term of this Agreement.

37. ASSIGNMENT: Vendor shall not sublet or assign this Work, or any part of it, without the written consent of the City. If any subcontractor is approved, Vendor shall be responsible and liable for all acts or omissions of that subcontractor for any Work performed.

38. WAIVER: No waiver by City of any breach of this Agreement by Vendor shall constitute a waiver of any subsequent breach by the Vendor, and no delay in enforcement of any breach shall be deemed a waiver of that breach.

39. ACCEPTANCE OF FINAL PAYMENT; RELEASE: Vendor's acceptance of the final payment shall be considered as a release in full of all claims against the City or its agents arising out of or by reason of the Work.